



Reprinted
April 11, 2007

ENGROSSED SENATE BILL No. 44

DIGEST OF SB 44 (Updated April 10, 2007 9:45 pm - DI 44)

Citations Affected: IC 5-8; IC 16-41; IC 31-37; IC 35-38; IC 35-40; IC 35-41.

Synopsis: HIV testing, child support matters and victim rights. Requires a state or local government officeholder who has been subject to a judgment: (1) of at least \$15,000 for delinquent child support payments; and (2) for more than 60 days; to be removed from office. Provides that the consent of a patient or the patient's representative to HIV screening may be either oral or in writing. Corrects certain cross-references that relate to HIV testing after convictions for certain sex and substance abuse offenses. Makes other changes and conforming amendments. Provides that an employee who is the victim of a crime may take unpaid leave from work to attend court proceedings and confer with the prosecuting attorney concerning the crime unless the employee's absence would cause significant difficulty or expense to an employer. Prohibits an employer from reducing employee benefits to an employee who is absent from employment in order to: (1) file a petition for an order for protection; (2) attend a hearing regarding an order for protection; and (3) exercise certain rights of the employee as (Continued next page)

Effective: Upon passage; July 1, 2007.

Bray, Bowser

(HOUSE SPONSORS — LAWSON L, FOLEY)

January 8, 2007, read first time and referred to Committee on Judiciary.
January 18, 2007, reported favorably — Do Pass.
January 22, 2007, read second time, ordered engrossed. Engrossed.
January 25, 2007, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 26, 2007, read first time and referred to Committee on Judiciary.
April 5, 2007, amended, reported — Do Pass.
April 9, 2007, ordered engrossed. Engrossed.
April 10, 2007, read third time, recommitted to Committee of One; amended, passed. Yeas 93, nays 5.

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a victim, in certain circumstances. Prohibits an employer from refusing to employ an individual who has exercised the individual's rights to attend court proceedings or to confer with a prosecuting attorney. Requires that employment records concerning an employee's absence to: (1) confer with a prosecuting attorney; (2) file a petition for an order for protection; (3) attend a hearing regarding an order for protection; or (4) exercise certain rights of the employee as a victim; be kept confidential. Requires a prosecuting attorney to advise a victim of the victim's rights as an employee. Makes other changes. (The introduced version of this bill was prepared by the sentencing policy study committee.)

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Reprinted
April 11, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 44

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-8-2-2 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2007]: **Sec. 2. Any person holding any office under the Constitution**
4 **of the State of Indiana or Indiana law who:**

5 (1) **is delinquent in the payment of at least fifteen thousand**
6 **dollars (\$15,000) in child support; and**

7 (2) **has been subject to a judgment under IC 31-16-16 for**
8 **delinquent child support payments for more than sixty (60)**
9 **days;**

10 **forfeits office and shall be removed from office under IC 34-17.**

11 SECTION 2. IC 16-41-6-1 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Except as
13 provided in IC 16-41-10-2.5 and subsection (b), a person may not
14 perform a screening or confirmatory test for the antibody or antigen to
15 HIV without the **oral or written** consent of the individual to be tested
16 or a representative as authorized under IC 16-36-1. A physician
17 ordering the test or the physician's authorized representative shall

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document whether or not the individual has consented. The test for the antibody or antigen to HIV may not be performed on a woman under section 5 or 6 of this chapter if the woman refuses under section 7 of this chapter to consent to the test.

(b) The test for the antibody or antigen to HIV may be performed if one (1) of the following conditions exists:

(1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the test is medically necessary to diagnose or treat the patient's condition.

(2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4 of this chapter.

(5) The test is required or authorized under IC 11-10-3-2.5.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

SECTION 3. IC 31-37-19-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) This section applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be:

(1) ~~a sex crime listed in IC 35-38-1-7.1(e)~~ **an offense relating to a criminal sexual act (as defined in IC 35-41-1-19.3)** and the ~~crime offense~~ created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in IC 35-38-1-7.1(b)(8); or~~

(2) an offense related to controlled substances ~~listed in IC 35-38-1-7.1(f)~~ **(as defined in IC 35-41-1-19.4)** if the offense involved:

(A) the delivery by a person to another person; or

(B) the use by a person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

(b) The juvenile court shall, in addition to any other order or decree the court makes under this chapter, order the child to undergo a screening test for the human immunodeficiency virus (HIV).

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(c) If the screening test indicates the presence of antibodies to HIV, the court shall order the child to undergo a confirmatory test.

(d) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health.

(e) The state department of health shall do the following:

(1) Notify **potentially affected** victims of the ~~crimes listed in IC 35-38-1-7.1(e) and IC 35-38-1-7.1(f)~~ **offenses relating to a criminal sexual act (as defined in IC 35-41-1-19.3) or relating to controlled substances (as defined in IC 35-41-1-19.4)** of the HIV screening results.

(2) Provide counseling regarding HIV and a referral for appropriate health care to the victims.

SECTION 4. IC 31-37-19-17.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17.4. (a) This section applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be a ~~sex crime listed in IC 35-38-1-7.1(e)~~ **an offense relating to a criminal sexual act (as defined in IC 35-41-1-19.3).**

(b) The juvenile court may, in addition to any other order or decree the court makes under this chapter, order:

(1) the child; and

(2) the child's parent or guardian;

to receive psychological counseling as directed by the court.

SECTION 5. IC 35-38-1-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9.5. A probation officer shall obtain confidential information from the state department of health under IC 16-41-8-1 to determine whether a convicted person was a carrier of the human immunodeficiency virus (HIV) when the crime was committed if the person is:

(1) convicted of a ~~sex crime listed in section 7.1(e) of this chapter~~ **an offense relating to a criminal sexual act** and the ~~crime offense~~ created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in section 7.1(b)(8) of this chapter;~~ or

(2) convicted of an offense relating to controlled substances ~~listed in section 7.1(f) of this chapter~~ and the offense involved: ~~the conditions described in section 7.1(b)(9)(A) of this chapter:~~

(A) the delivery by any person to another person; or

(B) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated

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risk of transmission of HIV by involving percutaneous contact.

SECTION 6. IC 35-38-1-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. (a) The court:

(1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:

(A) convicted of ~~a sex crime listed in section 7.1(e) of this chapter~~ **an offense relating to a criminal sexual act** and the ~~crime offense~~ created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); as described in ~~section 7.1(b)(8) of this chapter~~; or

(B) convicted of an offense related to controlled substances listed in ~~section 7.1(f) of this chapter~~ and the offense involved: the conditions described in ~~section 7.1(b)(9)(A) of this chapter~~:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact; and

(2) may order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the court has made a finding of probable cause after a hearing under section 10.7 of this chapter.

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

(1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and

(2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(d) A person who, in good faith:

(1) makes a report required to be made under this section; or

(2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to the offering of

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1 that report or testimony.

2 (e) The privileged communication between a husband and wife or
3 between a health care provider and the health care provider's patient is
4 not a ground for excluding information required under this section.

5 (f) A mental health service provider (as defined in IC 34-6-2-80)
6 who discloses information that must be disclosed to comply with this
7 section is immune from civil and criminal liability under Indiana
8 statutes that protect patient privacy and confidentiality.

9 SECTION 7. IC 35-38-1-10.6 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.6. (a) The state
11 department of health shall notify victims of ~~the crimes listed in section~~
12 ~~7.1(e) and 7.1(f) of this chapter~~ **an offense relating to a criminal**
13 **sexual act or an offense relating to controlled substances** if tests
14 conducted under section 10.5 or ~~section~~ 10.7 of this chapter confirm
15 that the person tested had antibodies for the human immunodeficiency
16 virus (HIV).

17 (b) The state department of health shall provide counseling to
18 persons notified under this section.

19 SECTION 8. IC 35-38-1-10.7 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.7. (a) Upon:

21 (1) written request made to a prosecuting attorney by an alleged
22 victim of ~~a sex offense listed in section 7.1(e) of this chapter;~~ **an**
23 **offense relating to a criminal sexual act;** and

24 (2) after a hearing held under this section, a court entering a
25 finding that there is probable cause to believe the alleged victim
26 is a victim of ~~a sex offense listed in section 7.1(e) of this chapter~~
27 **an offense relating to a criminal sexual act** that was committed
28 by the defendant;

29 the court may order an individual named as defendant in the
30 prosecution of the offense to undergo a screening test for human
31 immunodeficiency virus (HIV).

32 (b) Before issuing an order for testing under subsection (a), the
33 court shall conduct a hearing at which both the alleged victim and the
34 defendant have the right to be present. Both the alleged victim and the
35 defendant must be notified of:

36 (1) the date, time, and location of the hearing; and

37 (2) their right to be present at the hearing.

38 (c) During the hearing, only affidavits, counteraffidavits, and
39 medical records that relate to the material facts of the case used to
40 support or rebut a finding of probable cause to believe the alleged
41 victim was exposed to human immunodeficiency virus (HIV) as a
42 result of the alleged ~~sex~~ offense **relating to a criminal sexual act** may

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1 be admissible.

2 (d) The written request of the alleged victim made under subsection
3 (a) must be filed by the prosecuting attorney with the court and sealed
4 by a court.

5 (e) The requirements of section 10.5 of this chapter apply to testing
6 ordered by a court under this section.

7 (f) If the defendant has not been convicted, the results of a test
8 conducted under this section shall be kept confidential. The results may
9 not be made available to any person or public or private agency other
10 than the following:

11 (1) The defendant and the defendant's counsel.

12 (2) The prosecuting attorney.

13 (3) The department of correction.

14 (4) The victim and the victim's counsel.

15 (g) A victim may disclose the results of a test to an individual or
16 organization to protect the health and safety of or to seek compensation
17 for:

18 (1) the victim;

19 (2) the victim's sexual partner; or

20 (3) the victim's family.

21 (h) A person that knowingly or intentionally:

22 (1) receives notification or disclosure of the results of a test under
23 this section; and

24 (2) discloses the results of the test in violation of this section;
25 commits a Class B misdemeanor.

26 SECTION 9. IC 35-38-2-2.3, AS AMENDED BY P.L.60-2006,
27 SECTION 9, AND AS AMENDED BY P.L.140-2006, SECTION 24,
28 AND P.L.173-2006, SECTION 24, IS CORRECTED AND
29 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
30 PASSAGE]: Sec. 2.3. (a) As a condition of probation, the court may
31 require a person to do a combination of the following:

32 (1) Work faithfully at suitable employment or faithfully pursue a
33 course of study or vocational training that will equip the person
34 for suitable employment.

35 (2) Undergo available medical or psychiatric treatment and
36 remain in a specified institution if required for that purpose.

37 (3) Attend or reside in a facility established for the instruction,
38 recreation, or residence of persons on probation.

39 (4) Support the person's dependents and meet other family
40 responsibilities.

41 (5) Make restitution or reparation to the victim of the crime for
42 damage or injury that was sustained by the victim. When

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restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.

(6) Execute a repayment agreement with the appropriate governmental entity to repay the full amount of public relief or assistance wrongfully received, and make repayments according to a repayment schedule set out in the agreement.

(7) Pay a fine authorized by IC 35-50.

(8) Refrain from possessing a firearm or other deadly weapon unless granted written permission by the court or the person's probation officer.

(9) Report to a probation officer at reasonable times as directed by the court or the probation officer.

(10) Permit the person's probation officer to visit the person at reasonable times at the person's home or elsewhere.

(11) Remain within the jurisdiction of the court, unless granted permission to leave by the court or by the person's probation officer.

(12) Answer all reasonable inquiries by the court or the person's probation officer and promptly notify the court or probation officer of any change in address or employment.

(13) Perform uncompensated work that benefits the community.

(14) Satisfy other conditions reasonably related to the person's rehabilitation.

(15) Undergo home detention under IC 35-38-2.5.

(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of ~~a sex crime listed in IC 35-38-1-7.1(e)~~ **an offense relating to a criminal sexual act** and the ~~crime offense~~ created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in IC 35-38-1-7.1(b)(8);~~ or

(B) the person had been convicted of an offense related to a controlled substance ~~listed in IC 35-38-1-7.1(f)~~ and the offense involved: ~~the conditions described in IC 35-38-1-7.1(b)(9)(A):~~

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically

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demonstrated risk of transmission of HIV by involving percutaneous contact.

(17) Refrain from any direct or indirect contact with an individual.

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

(A) may not exceed an amount the person can or will be able to pay;

(B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the person; and

(C) takes into consideration and gives priority to any other restitution, reparation, repayment, or fine the person is required to pay under this section.

(21) Refrain from owning, harboring, or training an animal.

(22) *Participate in a reentry court program.*

(b) When a person is placed on probation, the person shall be given a written statement specifying:

(1) the conditions of probation; and

(2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(c) As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the time or intervals (consecutive or intermittent) within the period of

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1 probation the court determines.

2 (d) Intermittent service may be required only for a term of not more
3 than sixty (60) days and must be served in the county or local penal
4 facility. The intermittent term is computed on the basis of the actual
5 days spent in confinement and shall be completed within one (1) year.
6 A person does not earn credit time while serving an intermittent term
7 of imprisonment under this subsection. When the court orders
8 intermittent service, the court shall state:

9 (1) the term of imprisonment;

10 (2) the days or parts of days during which a person is to be
11 confined; and

12 (3) the conditions.

13 (e) Supervision of a person may be transferred from the court that
14 placed the person on probation to a court of another jurisdiction, with
15 the concurrence of both courts. Retransfers of supervision may occur
16 in the same manner. This subsection does not apply to transfers made
17 under IC 11-13-4 or IC 11-13-5.

18 (f) When a court imposes a condition of probation described in
19 subsection (a)(17):

20 (1) the clerk of the court shall comply with IC 5-2-9; and

21 (2) the prosecuting attorney shall file a confidential form
22 prescribed or approved by the division of state court
23 administration with the clerk.

24 (g) *As a condition of probation, a court shall require a person:*

25 (1) *convicted of an offense described in IC 10-13-6-10;*

26 (2) *who has not previously provided a DNA sample in accordance*
27 *with IC 10-13-6; and*

28 (3) *whose sentence does not involve a commitment to the*
29 *department of correction;*

30 *to provide a DNA sample as a condition of probation.*

31 SECTION 10. IC 35-40-4-4.5 IS ADDED TO THE INDIANA
32 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2007]: **Sec. 4.5. "Employee" means a victim**
34 **employed by an employer.**

35 SECTION 11. IC 35-40-4-4.6 IS ADDED TO THE INDIANA
36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2007]: **Sec. 4.6. "Employer" means a person**
38 **who:**

39 (1) **employs or will employ at least fifty (50) persons for each**
40 **working day in each of twenty (20) or more calendar weeks in**
41 **the current calendar year; or**

42 (2) **employed at least fifty (50) persons for each working day**

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in each of twenty (20) or more calendar weeks in the previous calendar year.

The term includes a person who acts directly or indirectly in the interest of an employer in relation to an employee.

SECTION 12. IC 35-40-5-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) Subject to subsections (b), (c), and (f), an employee has the right to leave work to:

(1) be present at a proceeding in accordance with:

(A) sections 5 through 7 of this chapter, in order to exercise the rights of a victim; and

(B) IC 35-40-11-1, in order to exercise the employee's rights as a victim to be present and to be heard at court proceedings;

(2) file a petition for an order for protection under IC 34-26-5-2;

(3) attend a hearing on a petition upon notification from a court under IC 34-26-5-10(a); and

(4) confer with a representative of the prosecuting attorney's office in accordance with section 3 of this chapter.

(b) An employer:

(1) may not:

(A) dismiss an employee; or

(B) reduce or restrict the:

(i) seniority;

(ii) precedence;

(iii) eligibility for a promotion;

(iv) eligibility for a salary increase; or

(v) eligibility for any other work related benefit;

of an employee who exercises the employee's rights under this section;

(2) may require an employee to use the employee's accrued vacation time, personal time, sick time, or compensatory leave time during the period the employee is absent from work while exercising the employee's rights under this section; and

(3) is not required to compensate an employee for any work time lost due to the employee's exercise of the employee's rights under this section.

(c) An employee may not exercise the employee's rights under this section unless the employee provides the employer with a copy of:

(1) the notice of victim's rights provided to the employee

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under IC 35-40-6-4; and

(2) any notice of scheduled proceedings that has been provided to the employee.

(d) Records maintained by an employer concerning an employee's exercise of the employee's rights under this section are confidential.

(e) An employer may not refuse to employ a person because the person has exercised the person's rights under this section.

(f) An employer may restrict the amount of time an employee is absent under this section if the employee's absence would create significant difficulty or cause significant expense to the employer in light of the size of the employer's business and the importance of the employee to the operation of the employer's business.

SECTION 13. IC 35-40-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. A prosecuting attorney or a victim assistance program shall do the following:

(1) Inform a victim that the victim may be present at all public stages of the criminal justice process to the extent that:

(A) the victim's presence and statements do not interfere with a defendant's constitutional rights; and

(B) there has not been a court order restricting, limiting, or prohibiting attendance at the criminal proceedings.

(2) Timely notify a victim of all criminal justice hearings and proceedings that are scheduled for a criminal matter in which the victim was involved.

(3) Promptly notify a victim when a criminal court proceeding has been rescheduled or canceled.

(4) Obtain an interpreter or translator, if necessary, to advise a victim of the rights granted to a victim under the law.

(5) Coordinate efforts of local law enforcement agencies that are designed to promptly inform a victim after an offense occurs of the availability of, and the application process for, community services for victims and the families of victims, including information concerning services such as the following:

(A) Victim compensation funds.

(B) Victim assistance resources.

(C) Legal resources.

(D) Mental health services.

(E) Social services.

(F) Health resources.

(G) Rehabilitative services.

(H) Financial assistance services.

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- 1 (I) Crisis intervention services.
- 2 (J) Transportation and child care services to promote the
- 3 participation of a victim or a member of the victim's
- 4 immediate family in the criminal proceedings.
- 5 (6) Inform the victim that the court may order a defendant
- 6 convicted of the offense involving the victim to pay restitution to
- 7 the victim under IC 35-50-5-3.
- 8 (7) Upon request of the victim, inform the victim of the terms and
- 9 conditions of release of the person accused of committing a crime
- 10 against the victim.
- 11 (8) Upon request of the victim, give the victim notice of the
- 12 criminal offense for which:
- 13 (A) the defendant accused of committing the offense against
- 14 the victim was convicted or acquitted; or
- 15 (B) the charges were dismissed against the defendant accused
- 16 of committing the offense against the victim.
- 17 (9) In a county having a victim-offender reconciliation program
- 18 (VORP), provide an opportunity for a victim, if the accused
- 19 person or the offender agrees, to:
- 20 (A) meet with the accused person or the offender in a safe,
- 21 controlled environment;
- 22 (B) give to the accused person or the offender, either orally or
- 23 in writing, a summary of the financial, emotional, and physical
- 24 effects of the offense on the victim and the victim's family; and
- 25 (C) negotiate a restitution agreement to be submitted to the
- 26 sentencing court for damages incurred by the victim as a result
- 27 of the offense.
- 28 (10) Assist a victim in preparing verified documentation
- 29 necessary to obtain a restitution order under IC 35-50-5-3.
- 30 (11) Advise a victim of other rights granted to a victim under the
- 31 law, **including the rights of an employee under IC 35-40-5-10.**
- 32 SECTION 14. IC 35-41-1-19.3 IS ADDED TO THE INDIANA
- 33 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 34 [EFFECTIVE UPON PASSAGE]: **Sec. 19.3. "Offense relating to a**
- 35 **criminal sexual act" means the following:**
- 36 (1) **Rape (IC 35-42-4-1).**
- 37 (2) **Criminal deviate conduct (IC 35-42-4-2).**
- 38 (3) **Child molesting (IC 35-42-4-3).**
- 39 (4) **Child seduction (IC 35-42-4-7).**
- 40 (5) **Prostitution (IC 35-45-4-2).**
- 41 (6) **Patronizing a prostitute (IC 35-45-4-3).**
- 42 (7) **Incest (IC 35-46-1-3).**

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1 **(8) Sexual misconduct with a minor under IC 35-42-4-9(a).**

2 SECTION 15. IC 35-41-1-19.4 IS ADDED TO THE INDIANA
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
4 [EFFECTIVE UPON PASSAGE]: **Sec. 19.4. "Offense relating to**
5 **controlled substances" means the following:**

6 **(1) Dealing in or manufacturing cocaine or a narcotic drug**
7 **(IC 35-48-4-1).**

8 **(2) Dealing in or manufacturing methamphetamine**
9 **(IC 35-48-4-1.1).**

10 **(3) Dealing in a schedule I, II, or III controlled substance**
11 **(IC 35-48-4-2).**

12 **(4) Dealing in a schedule IV controlled substance**
13 **(IC 35-48-4-3).**

14 **(5) Dealing in a schedule V controlled substance**
15 **(IC 35-48-4-4).**

16 **(6) Possession of cocaine or a narcotic drug (IC 35-48-4-6).**

17 **(7) Possession of methamphetamine (IC 35-48-4-6.1).**

18 **(8) Possession of a controlled substance (IC 35-48-4-7).**

19 **(9) Dealing in paraphernalia (IC 35-48-4-8.5).**

20 **(10) Possession of paraphernalia (IC 35-48-4-8.3).**

21 **(11) Offenses relating to registration (IC 35-48-4-14).**

22 SECTION 16. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Bowser be added as second author of Senate Bill 44.

BRAY

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 44, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 44 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 44, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-8-2-2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2. Any person holding any office under the Constitution of the State of Indiana or Indiana law who:**

(1) is delinquent in the payment of at least fifteen thousand dollars (\$15,000) in child support; and

(2) has been subject to a judgment under IC 31-16-16 for delinquent child support payments for more than sixty (60) days;

forfeits office and shall be removed from office under IC 34-17."

Page 1, line 2, delete "JULY 1, 2007]:" and insert "UPON PASSAGE]:".

Page 2, line 19, delete "JULY 1, 2007]:" and insert "UPON PASSAGE]:".

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Page 2, line 30, delete "JULY 1, 2007]:" and insert "UPON PASSAGE]:".

Page 3, line 8, delete "JULY 1, 2007]:" and insert "UPON PASSAGE]:".

Page 4, line 14, delete "JULY 1, 2007]:" and insert "UPON PASSAGE]:".

Page 4, line 17, delete "related" and insert "**relating**".

Page 4, line 24, delete "JULY 1, 2007]:" and insert "UPON PASSAGE]:".

Page 5, line 33, delete "JULY 1, 2007]:" and insert "UPON PASSAGE]:".

Page 8, between lines 34 and 35, begin a new paragraph and insert:
"SECTION 8. IC 35-40-4-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4.5. "Employee" means a victim employed by an employer.**

SECTION 9. IC 35-40-4-4.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4.6. "Employer" means a person who:**

- (1) employs or will employ at least fifty (50) persons for each working day in each of twenty (20) or more calendar weeks in the current calendar year; or
- (2) employed at least fifty (50) persons for each working day in each of twenty (20) or more calendar weeks in the previous calendar year.

The term includes a person who acts directly or indirectly in the interest of an employer in relation to an employee.

SECTION 10. IC 35-40-5-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 10. (a) Subject to subsections (b), (c), and (f), an employee has the right to leave work to:**

- (1) be present at a proceeding in accordance with:
 - (A) sections 5 through 7 of this chapter, in order to exercise the rights of a victim; and
 - (B) IC 35-40-11-1, in order to exercise the employee's rights as a victim to be present and to be heard at court proceedings;
- (2) file a petition for an order for protection under IC 34-26-5-2;
- (3) attend a hearing on a petition upon notification from a court under IC 34-26-5-10(a); and
- (4) confer with a representative of the prosecuting attorney's

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office in accordance with section 3 of this chapter.

(b) An employer:

(1) may not:

(A) dismiss an employee; or

(B) reduce or restrict the:

(i) seniority;

(ii) precedence;

(iii) eligibility for a promotion;

(iv) eligibility for a salary increase; or

(v) eligibility for any other work related benefit;

of an employee who exercises the employee's rights under this section;

(2) may require an employee to use the employee's accrued vacation time, personal time, sick time, or compensatory leave time during the period the employee is absent from work while exercising the employee's rights under this section; and

(3) is not required to compensate an employee for any work time lost due to the employee's exercise of the employee's rights under this section.

(c) An employee may not exercise the employee's rights under this section unless the employee provides the employer with a copy of:

(1) the notice of victim's rights provided to the employee under IC 35-40-6-4; and

(2) any notice of scheduled proceedings that has been provided to the employee.

(d) Records maintained by an employer concerning an employee's exercise of the employee's rights under this section are confidential.

(e) An employer may not refuse to employ a person because the person has exercised the person's rights under this section.

(f) An employer may restrict the amount of time an employee is absent under this section if the employee's absence would create significant difficulty or cause significant expense to the employer in light of the size of the employer's business and the importance of the employee to the operation of the employer's business.

SECTION 11. IC 35-40-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. A prosecuting attorney or a victim assistance program shall do the following:

(1) Inform a victim that the victim may be present at all public stages of the criminal justice process to the extent that:

(A) the victim's presence and statements do not interfere with

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- a defendant's constitutional rights; and
- (B) there has not been a court order restricting, limiting, or prohibiting attendance at the criminal proceedings.
- (2) Timely notify a victim of all criminal justice hearings and proceedings that are scheduled for a criminal matter in which the victim was involved.
- (3) Promptly notify a victim when a criminal court proceeding has been rescheduled or canceled.
- (4) Obtain an interpreter or translator, if necessary, to advise a victim of the rights granted to a victim under the law.
- (5) Coordinate efforts of local law enforcement agencies that are designed to promptly inform a victim after an offense occurs of the availability of, and the application process for, community services for victims and the families of victims, including information concerning services such as the following:
 - (A) Victim compensation funds.
 - (B) Victim assistance resources.
 - (C) Legal resources.
 - (D) Mental health services.
 - (E) Social services.
 - (F) Health resources.
 - (G) Rehabilitative services.
 - (H) Financial assistance services.
 - (I) Crisis intervention services.
 - (J) Transportation and child care services to promote the participation of a victim or a member of the victim's immediate family in the criminal proceedings.
- (6) Inform the victim that the court may order a defendant convicted of the offense involving the victim to pay restitution to the victim under IC 35-50-5-3.
- (7) Upon request of the victim, inform the victim of the terms and conditions of release of the person accused of committing a crime against the victim.
- (8) Upon request of the victim, give the victim notice of the criminal offense for which:
 - (A) the defendant accused of committing the offense against the victim was convicted or acquitted; or
 - (B) the charges were dismissed against the defendant accused of committing the offense against the victim.
- (9) In a county having a victim-offender reconciliation program (VORP), provide an opportunity for a victim, if the accused person or the offender agrees, to:

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- (A) meet with the accused person or the offender in a safe, controlled environment;
- (B) give to the accused person or the offender, either orally or in writing, a summary of the financial, emotional, and physical effects of the offense on the victim and the victim's family; and
- (C) negotiate a restitution agreement to be submitted to the sentencing court for damages incurred by the victim as a result of the offense.

(10) Assist a victim in preparing verified documentation necessary to obtain a restitution order under IC 35-50-5-3.

(11) Advise a victim of other rights granted to a victim under the law, **including the rights of an employee under IC 35-40-5-10.**"

Page 8, line 37, delete "JULY 1, 2007]:" and insert "UPON PASSAGE]:".

Page 9, line 7, delete "JULY 1, 2007]:" and insert "UPON PASSAGE]:".

Page 9, after line 24, begin a new paragraph and insert:
"SECTION 14. **An emergency is declared for this act.**"

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 44 as printed January 19, 2007.)

LAWSON L, Chair

Committee Vote: yeas 10, nays 0.

HOUSE MOTION

Mr. Speaker: Engrossed Senate Bill 44 be recommitted to a Committee of One, its sponsor, with specific instructions to amend as follows:

Page 1, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 2. IC 16-41-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Except as provided in IC 16-41-10-2.5 and subsection (b), a person may not perform a screening or confirmatory test for the antibody or antigen to HIV without the **oral or written** consent of the individual to be tested or a representative as authorized under IC 16-36-1. A physician ordering the test or the physician's authorized representative shall document whether or not the individual has consented. The test for the

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antibody or antigen to HIV may not be performed on a woman under section 5 or 6 of this chapter if the woman refuses under section 7 of this chapter to consent to the test.

(b) The test for the antibody or antigen to HIV may be performed if one (1) of the following conditions exists:

(1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the test is medically necessary to diagnose or treat the patient's condition.

(2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4 of this chapter.

(5) The test is required or authorized under IC 11-10-3-2.5.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).".

Renumber all SECTIONS consecutively.

(Reference is to ESB 44 as printed April 6, 2007.)

LAWSON L

COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred Engrossed Senate Bill 44, begs leave to report that said bill has been amended as directed.

LAWSON L

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